

## **In the Matter Of:**

Case No.: 1:21-cv-502(LGS)(GWG)

EDELMAN

v.

NYU LANGONE HEALTH SYSTEM, et al.

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**Deposition of Andrew Porges**

*Friday, December 10, 2021*

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
Case No.: 1:21-cv-502 (LGS) (GWG)

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DR. SARI EDELMAN,

Plaintiff,

-against-

NYU LANGONE HEALTH SYSTEM, NYU LANGONE HOSPITALS,  
NYU LANGONE MEDICAL CENTER, NYU LANGONE NASSAU  
RHEUMATOLOGY, NYU SCHOOL OF MEDICINE, NYU  
GROSSMAN SCHOOL OF MEDICINE, NYU HOSPITALS  
CENTER, ANDREW T. RUBIN, DAVID KAPLAN,  
JOSEPH ANTONIK AND JOSHUA SWIRNOW,

Defendants.

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December 10, 2021  
10:00 a.m.

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Examination before Trial of ANDREW PORGES,  
M.D. held pursuant to Notice, held via Zoom  
conference, before Ruthayn Sgaglio, a Notary  
Public of the State of New York.

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A P P E A R A N C E S :

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ALSO PRESENT:

Daniel T. Driesen, Esq.

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2 IT IS HEREBY STIPULATED AND AGREED, by  
3 and between the attorneys for the respective  
4 parties hereto, that this examination may be  
5 sworn to before any Notary Public.

6  
7 IT IS FURTHER STIPULATED AND AGREED that  
8 the sealing and filing of the said examination  
9 shall be waived.

10  
11 IT IS FURTHER STIPULATED AND AGREED that  
12 all objections to questions except as to form  
13 shall be reserved for trial.

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1 A. Porges, M.D.

2 MR. STEER: Objection to form.

3 A I would rather not speculate.

4 Q Generally speaking, to your knowledge when  
5 a physician is terminated for cause is that  
6 something that is reported to the medical board or  
7 the office of I believe it's OPMC?

8 MR. STEER: Objection to form.

9 A I have no idea.

10 Q To your knowledge, if there was a  
11 determination made that patients were at risk by  
12 keeping Dr. Edelman at NYU, why was Dr. Edelman kept  
13 at NYU for six months during her six month  
14 nonrenewal period?

15 MR. STEER: Objection to form.

16 A I have no idea.

17 Q Did the fact that Dr. Edelman remained at  
18 NYU for six months after she was notified that her  
19 contract would not be renewed cause you concern?

20 MR. STEER: Objection to form.

21 A Dr. Edelman left with almost no notice  
22 after five months, not after six months. She gave  
23 us notice on Friday that she would not be there on  
24 Monday. So she did not continue the six months.

25 MR. KATAEV: Move to strike as

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1 A. Porges, M.D.

2 giving him the negotiations. Which was probably not  
3 the date I joined NYU but probably January 1, 2014  
4 or whatever the date we had chosen; I don't know the  
5 exact date. We did probably two years, probably  
6 2012 and 2013, RVU production.

7 Q When you were presented with that wRVU  
8 target based on an average over two years, did you  
9 attempt to negotiate that target up or down?

10 A Not to my recollection at that time.

11 Q As you sit here today -- withdrawn.

12 Is it fair to say there is a direct  
13 correlation between the number of wRVUs and  
14 compensation offered?

15 MR. STEER: Objection to form.

16 A I think there is a relationship between  
17 those two things in the contracts that I have.

18 Q Before entering into the contract that you  
19 have with NYU, was there not a discussion concerning  
20 wRVUs and the attended compensation?

21 MR. STEER: Objection to form.

22 Can I have that read back, please?

23 (Whereupon, the referred to question was read back  
24 by the reporter.)

25 MR. STEER: Objection to form.

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1 A. Porges, M.D.

2 Q What is the name of the nurse?

3 A Patricia Fasolowich.

4 Q When did you speak to Joseph Antonik and  
5 Patricia Fasolowich about this request?

6 A I believe immediately upon David Kaplan  
7 giving me this deadline that I had to have it to him  
8 by that date, November 6th, within a couple of days  
9 of November 6th.

10 Q Did you speak to Joseph Antonik on the  
11 phone the day that you prepared this email with him?

12 MR. STEER: Objection to form.

13 A I don't recall. I spoke to him that week.  
14 I don't know if it was in person or on the phone.

15 Q With respect to this deadline that David  
16 Kaplan made, did you speak with David Kaplan about  
17 the deadline over the phone?

18 A I believe so.

19 Q What did you say to him and what did he  
20 say to you?

21 A To the best of my recollection, I said --  
22 I asked for more time to prepare the email, and to  
23 the best of my recollection he said that he was  
24 meeting with Andrew Rubin and Joshua Swirnow and he  
25 really needed it on that date.

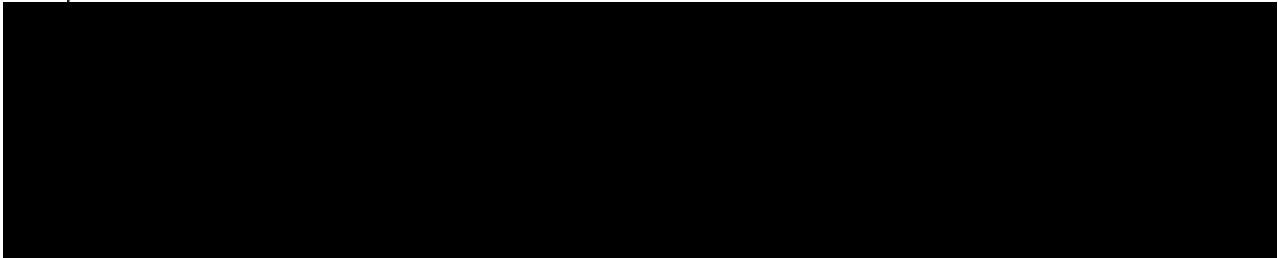
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1 A. Porges, M.D.

2 school at NYU, correct?

3 A Yes.



8 Q It would follow that you would stand to  
9 lose a lot if you went against NYU, correct?

10 MR. STEER: Objection. You may answer.  
11 Objection to form.

12 A I don't know what you mean by go against  
13 NYU.

14 Q Take any position that is adverse to NYU.

15 MR. STEER: Objection to form.

16 A Potentially. It depends on the position,  
17 whether I felt it justified -- it threatened my  
18 employment.

19 Q Do you believe that the email that you  
20 sent on November 6, 2020 was ethically justified  
21 according to the standards that you are to act as a  
22 doctor?

23 MR. STEER: Objection to form.

24 A Yes.

25 Q That's despite the fact that you did not



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1 A. Porges, M.D.

2 terminated?

3 A No.

4 Q Going back to your earlier testimony today  
5 that you had concerns about patient care with  
6 respect to Dr. Edelman; do you recall that  
7 testimony?

8 MR. STEER: Objection to form.

9 A I think there were multiple forms of it,  
10 but yes.

11 Q You specifically testified that you  
12 believed that continuing to have Dr. Edelman present  
13 at NYU would compromise patient care or create risks  
14 as to patient care, correct?

15 MR. STEER: Objection to form.

16 A I believe so, yes.

17 Q As a result of your concerns, were you not  
18 required to report those concerns independently to  
19 the office of compliance at NYU?

20 A I reported those concerns to Andrew Rubin,  
21 Joshua Swirnow and David Kaplan, and I felt that  
22 fulfilled my moral and legal obligation.

23 Q Were you under a similar ethical  
24 obligation to report any such concerns to the Office  
25 of Professional Medical Conduct?

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1 A. Porges, M.D.

2 MR. STEER: Objection to form.

3 Can I have that read back, please?

4 (Whereupon, the referred to question was read back  
5 by the reporter.)

6 MR. STEER: Objection to form.

7 A Not to my knowledge.

8 Q I'm going to place up on the screen one  
9 final exhibit. I believe it's number 16.

10 I will represent to you this is a  
11 display of a website, a government website, New York  
12 State Department of Health, which is publicly  
13 available, and it's titled, Understanding New York's  
14 Medical Conduct Program Physician Discipline.

15 Do you see that?

16 A Yes.

17 (Plaintiff's Exhibit 16, Marked for Identification.)

18 MR. STEER: Note my objection. Plaintiff  
19 has not disclosed to us before this deposition  
20 that he intended to use this exhibit. He's not  
21 produced it in discovery.

22 MR. KATAEV: Your objection is noted.

23 BY MR. KATAEV:

24 Q It says here under the heading, Who files  
25 complaints under the third bullet point.

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1 A. Porges, M.D.

2 MR. STEER: Let's call the judge.

3 MR. KATAEV: Go ahead.

4 (Whereupon a called was placed to the judge.)

5 MR. STEER: Note for the record that we  
6 have reached out to the court, that the court  
7 would have to start trying to reach out to the  
8 judge because it's after hours, and I spoke  
9 with the judge's clerk about the idea that we  
10 would mark this for a ruling rather than trying  
11 to have the clerk try to start reaching out to  
12 the judge and try to find her right now.

13 Please mark this for a ruling, this line  
14 of questioning.

15 (Marked for ruling.)

16 BY MR. KATAEV:

17 Q As I was asking earlier, the third bullet  
18 point under the heading Who Files Complaints which  
19 I've highlighted says, All licensed health  
20 professionals, including physicians -- I'm skipping  
21 the remaining two, Are required by State law to  
22 report colleagues whom they suspect may be guilty of  
23 misconduct. Failure to report suspected instances  
24 of misconduct is in itself misconduct.

25 Do you see that?

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1 A. Porges, M.D.

2 MR. STEER: Objection to form.

3 A I do.

4 Q Is it your testimony today that you  
5 believe that Dr. Edelman's actions constituted  
6 misconduct?

7 MR. STEER: Objection to form. You are  
8 asking him for a legal definition of something  
9 in a --

10 MR. KATAEV: Please don't make a speaking  
11 objection.

12 MR. STEER: I'm putting an objection for  
13 the record and we've marked it already for a  
14 ruling.

15 MR. KATAEV: Very good.

16 A I don't know.

17 Q You testified earlier today that the  
18 reasons -- withdrawn.

19 You testified earlier today that you  
20 recommended to Andrew Rubin and Joshua Swirnow that  
21 Dr. Edelman's contract not be renewed because you  
22 were concerned about patient care, correct?

23 MR. STEER: Objection to form.

24 A I don't believe that's correct.

25 Q What is correct?

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1 A. Porges, M.D.

2 A I testified today that I was concerned  
3 about Dr. Edelman's patient care and conduct, but I  
4 don't believe I testified that I told them to not  
5 renew her contract.

6 Q Based on your concerns about her patient  
7 care and conduct, were you not required, according  
8 to this, to report it to the Office of Professional  
9 Medical Conduct?

10 MR. STEER: Objection to form.

11 A I don't know.

12 Q Are you aware as to whether you're  
13 required to know these things?

14 MR. STEER: Objection to form.

15 A I don't know.

16 Q Dr. Porges, thank you very much for your  
17 testimony today. I have no further questions.

18 MR. STEER: I would like a rough ASCII for  
19 Sunday.

20 THE COURT REPORTER: Absolutely.

21

22 (Time noted: 5:40 p.m.)

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